

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 183 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GAFURBHAI N BHARWAD

Versus

STATE OF GUJARAT

Appearance:

MR BB NAIK for Petitioners
MR IM PANDYA AGP for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 10/10/2000

ORAL JUDGEMENT

#. Heard Mr.B.B.Naik, learned advocate appearing on behalf of the petitioners and Mr.I.M.Pandya, learned AGP for respondent No. 1. Though notice of rule has been served to respondent No.2, none appeared on his behalf.

#. By way of this petition, the petitioners have challenged the order passed by the Gujarat Revenue Tribunal in revision application No. Ten.B.A./ 946/86 dated 30th July, 1990 wherein, the Revenue Tribunal has confirmed the judgement and order passed by the Deputy Collector (Appeals), Ahmedabad in Tenancy Appeal No. 10/84 dated 12th May, 1986 confirming the order of the Mamlatdar and ALT, Viramgam dated 5th August, 1982 in Case No.6760-Sachena under Section 84-C of the Bombay Tenancy and Agricultural Lands Act.

#. The brief facts giving rise to the present petition are as under :-

The petitioners entered into a sale agreement with the respondent No.2 for purchasing the land out of Survey No. 879 admeasuring 22 acres of village Sachena, Taluka Viramgam. The said agreement was executed between the parties on 13th May, 1972. The petitioners agreed to purchase the said land for Rs.15,000/- from the respondent No. 2. The said agreement was registered with the Sub Registrar, Viramgam on 19th May, 1972 and the petitioners were put in possession of the land in question by the respondent No.2 after execution of the said agreement to sell. The Mamlatdar and ALT, Viramgam has issued notice dated 7th April, 1980 to the petitioners and the respondent No.1 under the provisions of Section 84-C read with Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948. The Mamlatdar and ALT, Viramgam in Tenancy Case No. 6760 / 79 Sachena has initiated proceedings under Section 84-C against the petitioners and the respondent No.2 and ultimately come to the conclusion that transaction of agreement to sell is violative of provisions of Section 43 of the Tenancy Act and therefore such transaction has been declared invalid and illegal and land in question has been directed to be vested with the Government by order dated 5th August, 1982. Consequently, appeal was filed by the petitioner before the Deputy Collector (Appeals), vide Appeal No.10/84 but the said appeal was also rejected by the Deputy Collector, Ahmedabad by order dated 12th May, 1986. Thereafter, the petitioner has filed revision application before the Gujarat Revenue Tribunal in Tenancy/B.A.No. 946/86 wherein the revision application is also rejected by the tribunal vide order dated 30th July, 1990.

#. In the present petition, learned advocate Mr.Naik has raised two main contentions. The first contention is that the authority concerned can exercise suo motu powers

for confiscation of the land and summary eviction of the petitioners within a reasonable time and in the instant case, the suo motu powers have been exercised by the Mamlatdar and ALT, Viramgam under Section 84-C after period of 8 years from the transaction date 13th May, 1972 and therefore, there is unreasonable delay on the part of the Mamlatdar and ALT. The second contention which has been raised by the the learned Advocate that the agreement to sell is not transfer of land in question as provided under Transfer of Property Act and therefore, there is no violation of provision of Section 43 of the Act and therefore, no proceedings under the provisions of Section 84-C can be taken up against the petitioners. In short, submission of learned Advocate Mr.Naik is that the agreement to sell is not sell deed and therefore, in such situation the provision of Section 43 of the Act is not applicable and no provisions of Transfer of Property Act are violated in any view of the matter.

#. Mr.Naik, learned advocate has also relied on two decisions of this Court in cases of PATEL CHHOTALAL SHANKARBHAI VS. PATEL SHANTABHAI NARSINGHBHAI reported in 1975 GLR page 247s. In the said decision, this Court has observed that there is nothing in Section 43, sub clause (1) of the Bombay Tenancy Act to show that agreement to sell cannot be entered into before obtaining a sanction of the Collector. There is nothing in Section 32(R) of the Tenancy Act to show that it has any application to the question of the possession of the persons on the basis of the agreement of sell or that the possession of such person is illegal. It is therefore open for the party in possession of land in view of the agreement of sell to raise defence of part performance under Section 53-A of the Transfer of Property Act. Therefore, this Court has observed that the agreement of sell in such circumstances cannot consider to be illegal or invalid. Shri Naik has also relied on one another decision of this Court in case of PUNABHAI DEDUBHAI BARIYA VS. PATEL CHHAGANBHAI PARSHOOTTAMDAS reported in 1983 (2) GLR 1165. This Court has observed that Section 43 of the Bombay Tenancy Act as applicable at the relevant time in the year 1970, impugned transaction took place, shows that transactions which hit by Section 43 (1) if they are not entered into after obtaining previous sanction of the Collector, are all completed transaction like sell, gift, exchange and mortgage etc. which by themselves will operate as fully completed and legally operative transfers. The agreement in the instant case by itself cannot operate as completed usufructuary mortgage transaction as it is unregistered. Consequently, the said transaction cannot be said to have

been hit by Section 43 as previous sanction of the Collector was not obtained before the petitioners entered into the agreement in favour of the respondent. Mr. Naik, learned advocate has also relied upon the decision of Apex Court in case of MOHAMAD KAVI HOHAMAD AMIN VS. FATMABAI IBRAHIM reported in (1997) 6 Supreme Court Cases 71, wherein the Apex Court has observed that Section 84-C of the Bombay Tenancy Act does not prescribe any time for initiation of the proceedings but in view of the settled position by several judgements of this Court that wherever, the power is vested in the statutory authority without prescribing any time limit, such powers should be exercised within a reasonable time but in the case before the Apex Court, transfer took place as early as possible in the year 1972 and suo motu inquiry was started by the Mamlatdar in September, 1973. If sale deeds are declared to be invalid, the appellant is likely to suffer irreparable injuries because he has made investment after aforesaid purchase. In this connection, the Apex Court has relied upon decision in case of STATE OF GUJARAT VS. JETHMAL BHAGWANDAS SHAH. The judgment of this Court in Special Civil Application No. 2770 / 1979 decided on 1st March, 1990 where in connection with Section 84-C, it was stated that powers under the aforesaid Section should be exercised within reasonable time. The Apex Court in case of STATE OF GUJARAT VS. RAGHAVNATHA reported in 1968(2) Supreme Court Cases 187 and in case of RAMCHANDRA VS. UNION OF INDIA reported in 1994 (1) SCC 44 impressed that where no time limit is prescribed for exercise of powers under the Statute, it does not mean that it can be exercised at any time but in fact, such powers has to be exercised within reasonable time. In the facts and circumstances of the case, suo motu powers under Section 84-C of the Act was not exercised by the Mamlatdar within reasonable time.

#. I have considered two decisions of this Court as well one decision of the Apex Court. The facts of the case is squarely covered by three decisions of this Court on the basis of the undisputed facts between the parties. The agreement to sell is dated 13th May, 1972 and proceedings initiated by the Mamlatdar and ALT under Section 84-C by issuing first show cause notice dated 7th April, 1980 to the petitioners and respondent No.2. Therefore, after period of 8 years, the suo motu proceeding has been initiated against the petitioner. Therefore, the said power has not been exercised within a reasonable time by the Mamlatdar while exercising the powers under Section 84-C of the Bombay Tenancy Act. The second aspect is that the Mamlatdar has come to the conclusion that Section 43 of the Tenancy Act has been violated on the

basis of the fact that agreement to sell dated 13th May, 1972 has been considered as sale deed which apparently a erroneous finding given by the Mamlatdar by his order dated 5th August, 1982. It was an agreement to sell by registered document and considering two decisions of this Court, in such situation, Section 43 of the Tenancy Act, cannot be considered to have been violated even though possession has been given to the petitioners by respondent No.2. Therefore, considering all these aspects of the matter and in view of observations made by this Court as well as the Apex Court, according to my opinion, present petition is required to be allowed and the order passed by the Mamlatdar dated 5th August, 1982 and order passed by the Deputy Collector dated 12th May, 1986 and the order passed by the Gujarat Revenue Tribunal dated 30th July, 1990 are hereby quashed and set aside. Rule is made absolute. No order as to costs.

[H.K.Rathod, J.]

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